

**WAUKESHA COUNTY BOARD OF ADJUSTMENT
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, December 14, 2005, at 6:30 p.m. in Room 155/159 of the Waukesha County Administration Center, 1320 Pewaukee Road, Waukesha County Wisconsin, 53188.

BOARD MEMBERS PRESENT: James Ward, Chairman
Robert Bartholomew
Paul Schultz
Walter Tarmann
Walter Schmidt

BOARD MEMBERS ABSENT: None

SECRETARY TO THE BOARD: Sheri K. Mount

OTHERS PRESENT: Town of Merton Board of Adjustment
Mary Maselier, BA05:096, co-owner
Joan Gucciardi, BA05:096, neighbor
William Taibl, BA05:094, attorney to petitioner
Gerald A. Noll, BA05:088, owner/petitioner
Dennis Becker, BA05:097, petitioner
Steve Menden, BA05:096, contractor
Frank & Jolene Reck, BA05:097, neighbor
Joe Johnson, BA05:095, petitioner/contractor
Mark Ciborowski, BA05:095, owner
Dale Kolbeck, BA05:094, petitioner/architect
JoAnn Marsh, Ciborowski, neighbor
Robert & Nancy Dunsmoor, BA05:089, owners
Randy & Karen Warobick, BA05:083, owners

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and a taped copy or transcript is available, at cost, upon request.

SUMMARIES OF PREVIOUS MEETINGS:

Mr. Schmidt

I make a motion to approve the Summary of the Meeting of November 9, 2005, with the following modification:

1. *In BA05:063 Roger Abdin, the revision of condition #1 shall be revised to read as follows: Prior to the issuance of a Zoning Permit, the boathouse and the lower deck (the one along the shoreline) must be removed from the property, excepting those portions of the south and west walls of the boathouse that are needed as retaining walls, which may remain. The remainder of the boathouse structure must be removed and only those portions of the south and the west walls of the boathouse that function as retaining walls may remain. The remaining portion of the south wall of the boathouse shall architecturally complement the other portion of the retaining wall and the remaining portion of the west wall of the boathouse shall parallel the grade along the west lot line. A plan indicating how the south and west walls of the boathouse will be re-configured into retaining walls must be submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. A plan for shoreline restoration and revegetation in that area between the shoreline and the retaining wall must also be submitted to Planning & Zoning Division staff for review and approval, prior to the issuance of Zoning Permit. The revegetation plan shall*

address stabilization of the shoreline area and also screening of the "wall" of the upper deck, the west wall, and the south wall from the Lake. The privacy fence shall either be removed or modified to follow the grade line of the retaining wall to be formed from the west wall of the boathouse.

The motion was seconded by Mr. Tarmann and carried with four yes votes. Mr. Bartholomew abstained because he was not present at the meeting of November 9, 2005.

NEW BUSINESS:

BA05:088 ROGERS MEMORIAL HOSPITAL

Mr. Bartholomew *I move to approve the request in accordance with the staff's recommendation, subject to the conditions recommended in the Staff Report with the following modification:*

A sixth condition shall be added and shall read as follows: "The proposed "cupola" on the roof is not permitted."

The motion was seconded by Mr. Ward. Mr. Tarmann voted against and the motion carried 4-1.

The staff's recommendation was for approval, with the following conditions:

1. The gazebo/bath house must be constructed within the exact same footprint of the existing foundation. The proposed "cantilevered" deck is not permitted.
2. The gazebo shall be a screened-in room only. A full enclosure of the structure is not permitted.
3. No new retaining walls are permitted.
4. No grading or earth-altering activities are permitted as the existing foundation is to be utilized.
5. Prior to the issuance of a Zoning Permit, a new stake-out survey showing the location of the gazebo/bath house, and all existing structures, as well as any newly proposed sidewalks, stairs, and walkways, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.

The reasons for the decision are as follows:

It has been demonstrated, as is required for a variance that denial of the requested variances from the shore setback, offset, accessory building height and the 50% provision of the Ordinance would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. The property is zoned P-I and therefore some allowance for additional structures of special use should be accommodated. This district is intended to provide for those uses which serve a public need and are principally of an institutional, educational, medical, or governmental nature (whether public or privately owned and either "for profit" or "not for profit") and serving a public need. The gazebo also has historic value to the area and the community. In addition, removal of the structure would result in major land disturbing activities due to the topography and the fact that the foundation currently acts as a retaining wall. The granting of variance to allow gazebo portion of the structure to be rebuilt on the existing foundation allows the owners reasonable use of the property that is not unnecessarily burdensome and facilitates the use of the Lake for patients at the hospital. In addition, the approval of this request, with the recommended modifications and conditions will ensure that no additional short or long-term

impacts will occur on this property as a result of the gazebo and bath house. Therefore, the approval of the requests is not contrary to the public interest and is in conformance with the purpose and intent of the Ordinance.

BA05:094 JAMES MCKENNA
Oakton Beach, LLC - Owner

Mr. Schmidt

I move to approve the request in accordance with the staff's recommendation, subject to the conditions recommended in the Staff Report and for the reasons stated in the Staff Report with the following modifications:

Condition #2 shall be modified to read as follows: The paved portion of the proposed driveway shall be at least 12 feet wide and shall be located a minimum of three (3) feet from the wellhouse.

Condition #3 shall be removed.

A condition shall be added that reads as follows: In order to ensure the driveway in the easement and construction of the new residence and attached garage does not result in adverse drainage onto adjacent properties, a detailed grading and drainage plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on drainage. This grading plan may be combined with the Plat of Survey required in Condition No. 4.

The motion was seconded by Mr. Schultz and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. The two existing easements to the north must be formally vacated and proof of this vacation shall be submitted to Planning & Zoning Division staff prior to the issuance of a zoning permit for the new residence at N23 W28994 Louis Ave. (the property served by the proposed easement).
2. The paved portion of the proposed driveway shall be at least 12 feet wide.
3. The proposed easement shall be located a minimum of 5 ft. from the existing well house.
4. The easement must contain a minimum 15 ft. width along the public road (Louis Ave) and maintain this minimum width for its entire length.
5. Prior to the recordation of the easement document, a stake-out survey showing the revised location and paved width of the proposed easement, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
6. The final recorded easement document shall be signed by both the property owner (Oakton Beach, LLC) and the owners of N23 W28994 Louis Ave. (property served by the easement) and a copy of the recorded document shall be supplied to Planning & Zoning Division staff prior to issuance of a zoning permit for the

new residence at N23 W28994 Louis Ave.

The reasons for the decision, as stated in the Staff Report, are as follows:

The property being served by the proposed easement is landlocked and therefore some access from a private easement must be provided. The approval of this request, with the recommended modifications and conditions will result in the elimination of two existing 15 ft. private easements and the creation of one easement in a more desirable location from a safety standpoint. In addition, it provides the minimum setback required in order for the Oakton Beach owners to have safe and full access to the well house without having to be in the proposed easement. Therefore, the approval of the request provides reasonable use of the property that is not unnecessarily burdensome, accounts for the physical limitations on the property that are not self-created and is not contrary to the public interest. Therefore, the approval, as conditioned, is in conformance with the purpose and intent of the Ordinance.

BA05:095 MARK & CHRISTINE CIBOROWSKI
Old World Craftsmen - Petitioner

Mr. Bartholomew *I move to approve the request in accordance with the staff's recommendation, subject to the conditions recommended in the Staff Report and for the reasons stated in the Staff Report.*

The motion was seconded by Mr. Schmidt and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. No other remodeling or additions are permitted other than that which has been presented to the Board.
2. Prior to the issuance of a Zoning Permit, a stake-out survey showing the location of the proposed addition, and all existing structures, as well as any newly proposed sidewalks, stairs, and walkways, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
3. No additional accessory buildings may be constructed on the property.
4. No retaining walls are permitted.

The reasons for the decision, as stated in the Staff Report, are as follows:

It has been demonstrated, as is required for a variance that denial of the requested variance from the 50% provision of the Ordinance would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. The residence is a substantially conforming structure as it is only slightly closer to the south lot line than the required 7 ft. The granting of variance to allow the existing residence to be remodeled and construction of a small one-story addition allows the owners reasonable use of the property that is not unnecessarily burdensome. In addition, the approval of this request, with the recommended modifications and conditions will result in the permanent removal of a nonconforming shed from the property and a reduced accessory building floor area ratio. Therefore, the approval of the request for a variance from the 50% provision of the Ordinance for the proposed project is not contrary to the public interest and is in conformance with the purpose and intent of the Ordinance.

BA05:096 CHARLOTTE VOIGT
Patio Enclosures, Inc - Petitioner

Mr. Tarmann *I move to deny the request in accordance with the staff's recommendation, for the reasons set forth in the Staff Report.*

The motion was seconded by Mr. Schultz. Mr. Ward and Mr. Schmidt voted against and the motion carried 3-2.

The staff's recommendation was for denial.

The reasons for the decision, as stated in the Staff Report, are as follows:

The petitioner can use the property for a permitted use without the requested variances. The petitioners state that the existing deck cannot be fully utilized in its current condition, but this is not a valid argument for two reasons: First, a three-season and deck are not necessary in order to have reasonable residential use of any property. Therefore, the burden of hardship has not been met. Secondly, the wetland area was present when the petitioners purchased this property and when the previous variance was granted. It is not a new or changed condition. The reasons given by the property owners for granting variances to allow this structure to encroach further on the shore, floodplain and conservancy areas are not reasons to grant a variance as they are specific to the needs and wants of the owners and not to the property itself. Furthermore, reasonable use was established through the granting of the previous variance. If the petitioners wanted additional living or recreational space, it should have been planned for when the home was constructed. Therefore, it has not been demonstrated, as required for a variance, that denial of the requested variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. The approval of this request would not be in conformance with the purpose and intent of the Ordinance.

BA05:097 DENNIS BECKER
Diane Higgins - Owner

Mr. Schmidt *I make a motion to approve the requested variances from the road setback, offset, floor area ratio and open space requirements and deny the requested variances from the shore setback and floodplain setback, with the conditions stated in the Staff Report, with the following modifications:*

Condition #1 shall be amended to read as follows: The proposed residence must be reduced in size so that the total floor area, including the first and second floors (not including the basement level), any covered decks, covered patios, and/or covered porches, and the attached garage do not exceed 2,926 sq. ft. This will result in a floor area ratio of approximately 19.5%.

Condition #11 shall be amended to read as follows: Prior to the issuance of a Zoning Permit, a stake-out survey showing the location of the proposed residence, attached garage, any proposed decks or patios, as well as any proposed sidewalks, stairs, walkways, and/or retaining walls, as well as all existing structures that are proposed to remain, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval. This survey must also show the location of the 100-year floodplain elevation on the property. Any proposed improvements must be constructed within the approved building envelope (attached as Exhibit A).

A condition shall be added and the conditions renumbered accordingly and the condition shall read as follows: Any new decks or patios must be constructed within the approved building envelope and must adhere to all offset and setback

requirements of this approval. The approved building envelope is attached as Exhibit A.

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was for approval of variances from the road setback, offset and open space requirements, and denial of variances from the floor area ratio, shore setback and floodplain setback requirements, with the following conditions:

1. The proposed residence must be reduced in size so that the total floor area, including the first and second floors (not including the basement level), any covered decks, covered patios, and/or covered porches, and the attached garage do not exceed 2,250 sq. ft. This will result in a floor area ratio of approximately 15%.
2. The proposed residence must have a first floor of at least 850 sq. ft. and an attached garage of at least 400 sq. ft.
3. Any proposed storage area over the attached garage must be included in the floor area calculations, unless it is accessible **only** via pull-down stairs from the garage and cannot be accessed from the upper level of the residence either now or in the future. If the house plans indicate that any storage area over the attached garage could be easily converted to living area with a direct connection to the upper level of the residence, a Declaration of Restrictions, stating that area cannot be converted to living area without the approval of the Waukesha County Board of Adjustment or its successor, must be recorded in the Waukesha County Register of Deed's office, prior to the issuance of a Zoning Permit.
4. The proposed residence must not exceed three stories (including any exposed basement level), as viewed from the lake. The proposed residence and attached garage must conform to the height requirements of the Ordinance.
5. The residence must be at least 10 ft. from the southern lot line and at least 20 ft. from all other lot lines, as measured to the outer edges of the walls and any windows/bump outs that extend further out from the structure than the walls, with overhangs not to exceed two (2) ft. in width. Any sidewalks, stairs, or walkways along the sides of the residence must be located at least three (3) ft. from the side lot lines.
6. The residence and attached garage must be a minimum of 57 ft. from the 100-year floodplain elevation or the Ordinary High Water Mark of Tearney Lake, whichever is more restrictive, with overhangs not to exceed two (2) ft. in width.
7. The existing patio and retaining walls can remain; however any reconstruction of these structures would require additional permits and approvals. Any new decks or patios must adhere to all offset and setback requirements of this approval and require additional permits and/or approvals for their construction.
8. No retaining walls will be permitted within 75 ft. of the lake, unless the Planning and Zoning Division staff determines that they are necessary for erosion and sediment control. No retaining walls will be permitted within 5 ft. of the side lot lines, without approval from the Town of Oconomowoc Plan Commission and the Waukesha County Park and Planning Commission.
9. The residence and attached garage must be at least 5 ft. from the right-of-way of Gietzen Drive, with an overhang not to exceed two (2) ft. in width.
10. Prior to the issuance of a Zoning Permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
11. Prior to the issuance of a Zoning Permit, a stake-out survey showing the location of the proposed residence, attached garage, any proposed decks or patios, as well as any proposed sidewalks, stairs, walkways,

and/or retaining walls, as well as all existing structures that are proposed to remain, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval. This survey must also show the location of the 100-year floodplain elevation on the property.

12. In order to ensure the construction of a new residence and attached garage does not result in adverse drainage onto adjacent properties, a detailed grading and drainage plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on drainage. This grading plan may be combined with the Plat of Survey required in Condition No. 10.
13. Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff, prior to the issuance of a Zoning Permit.

The reasons for the decision are as follows:

The approval of this request, with the recommended conditions, will allow a reasonable use of the property that is not unnecessarily burdensome and is in scale with the lot size. It has not been demonstrated, as required for a variance, that denial of the requested variances from the shore and floodplain setback requirements would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. It is possible to construct a reasonably sized residence and attached garage that is located the required 57 ft. from the shore and the floodplain. While there are steep slopes on the property, this is not a unique situation to this property. All of the properties in the immediate area on the same side of Gietzen Dr. contain the same type of topography as this lot. More importantly, it is possible to redesign the home and build in a location that would be conforming to the shore and floodplain setback requirements. Granting of the road setback variance allows further flexibility in attaining the shore and floodplain setback requirements. A road setback variance, as recommended, will not interfere with the public's use of the road or be a safety hazard. It will result in a residence with an attached garage located 5 ft. from the edge of the right-of-way, and 12 ft. from the actual road, which will provide enough area for safe ingress and egress from the garage. Conformance with a floor area ratio of 19.5% would permit a total floor area (not including the fully exposed basement level) of 2,926 sq. ft., which provides a reasonable use of this property and will be conforming once sewers are installed in the area in the Fall of 2006. Conformance with the open space requirement of 15,000 sq. ft. is impossible because the lot area is only 15,005 sq. ft. Therefore, some relief from the road setback, offset and open space requirements should be provided. Variances, however, should be granted only to provide the minimum relief necessary for a reasonable use of the property.

It is felt by the Board, that the proposed residence and attached garage are too large for the lot and a smaller residence and attached garage, as recommended, would still provide for a reasonable use of the property. A smaller residence and attached garage will also make it possible to achieve the shore and floodplain setbacks. As approved, a total floor area of 2,926 sq. ft. (not including the basement square footage) provides a reasonable use of the property, is not unnecessarily burdensome and will permit the construction of a residence and attached garage that will be appropriately sized for the lot, and not detrimental to the surrounding neighborhood or contrary to the public interest. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA05:089 ROBERT & NANCY DUNSMOOR

Mr. Schultz *I move to deny the request in accordance with the staff's recommendation, for the reasons set forth in the Staff Report.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was for denial.

The reasons for the decision, as stated in the Staff Report, are as follows:

It has not been demonstrated, as required for a variance, that denial of the requested variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. The petitioner can use the property for a permitted use without the requested variances. In fact, the petitioner currently enjoys much more than a reasonable use as the property contains two large residences on a lot zoned for single-family residential use. Variances should only be granted to accommodate physical limitations on a property that prevent a reasonable use of the property and not the personal preferences or needs of the property owner. It is felt by the Waukesha County staff that, while the petitioners may desire more storage area on the property, it is certainly not necessary for a reasonable use of the property. Further, if the owners need additional storage space, they can remove the second residence and construct a garage. Accessory structures such as boathouses, sheds, decks, etc. are amenities to a property, but are not necessary for reasonable residential use of a property. Case law has repeatedly held that petitioners are not entitled to the "highest and best use" of a property, but only reasonable use. Further, any hardship that does exist at this point due to the fact that the shed is already there is certainly self-created, as the petitioners have brought the need for a variance upon themselves by illegally undertaking work without permits. It should also be noted that this is not the first time these owners have had to ask for after-the-fact variances on this property to legalize work done without permits. The request does not meet any of the legal standards for the granting of a variance and therefore, the approval of this request would not be in conformance with the purpose and intent of the Ordinance.

It should be noted that denial of the requested variances, as the request is after-the-fact, means that the shed must be removed from the property.

OTHER ITEMS REQUIRING BOARD ACTION:**BA05:083 RANDY & KAREN WAROBICK**

Mr. Tarmann *I move to reconsider Condition No. 4 of our approval of November 9, 2005.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

Mr. Tarmann *I move to revise Condition No. 4 in accordance with the Staff Memorandum dated December 14, 2004 for the reason stated in the Staff Memorandum. Condition No. 4 shall be revised to read as follows: A new residence with an attached garage may be constructed on the east side of Silver Spring Lane, but in order to maximize the floodplain setback, it must be located 20 ft. from the edge of the private road right-of-way of Silver Spring Lane. In addition, the new residence, including all appurtenances such as patios or decks, must be located at least 5 ft. from the 100-year floodplain.*
Note: Overhangs less than two (2) ft. in width may extend into the above-required setback areas. Overhangs greater than two (2) ft. in width must meet the required setbacks noted above

The motion was seconded by Mr. Ward and carried unanimously.

Approve the attendance of Board of Adjustment members at a Zoning Board of Adjustment/Appeals Workshop:

Mr. Tarmann

I make a motion to approve the attendance of Board of Adjustment members at the Zoning Board of Adjustment/Appeals Workshop presented by the University of Wisconsin-Extension Center for Land Use Education that was held at the Broux House in Stoughton, Wisconsin on December 8, 2005.

The motion was seconded by Mr. Ward and carried unanimously.

ADJOURNMENT:

Mr. Ward

I make a motion to adjourn this meeting at 10:46 p.m.

The motion was seconded by Mr. Bartholomew and carried unanimously.

Respectfully submitted,

Sheri K. Mount
Secretary, Board of Adjustment